IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 517 of 1999.

Reserved on: 13.8.2007.

Decided on: 22.08.2007.

Shammi Kumar. … … Petitioner.

Versus

State Bank of Patiala and Others. … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the Petitioner: **Mr. R.K. Gautam, Senior Advocate with Mr. Anurag Sharma, Advocate.**

For the Respondents: **Mr. K.D. Sood, Advocate.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that the disciplinary proceedings were initiated against the petitioner. The charge-sheet was framed against him on 7.3.1998. He submitted reply to the charge-sheet on 16.4.1998. The respondents-Bank had appointed Inquiry Officer to look into the charges levelled against the petitioner. A show cause notice was issued to the petitioner on 6.1.1999. He was called upon to file reply to the show cause notice within a period

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[1] *Whether the reporters of local papers may be allowed to see the judgment? Yes.*

of 15 days from the receipt of notice dated 6.1.1999. He submitted reply to the show cause notice on 18.1.1999. The penalty of dismissal from service was inflicted upon him vide communication dated 17.3.1999. He preferred an appeal against the imposition of penalty of dismissal which was also dismissed by the appellate authority on 3.6.1999.

Mr. R.K. Gautam had strenuously argued that the very initiation of the disciplinary proceedings and its culmination in the dismissal from service is against the principles of natural justice. He also contended that the copy of the inquiry report was not supplied to the petitioner as per the law laid down by the Hon'ble Supreme Court before the disciplinary authority had made-up its mind for imposing the penalty of dismissal as laid down in ***Managing Director, ECIL, Hyderabad and Others versus B. Karunakar and Others, (1993) 4 SCC 727***. He thus contended that the disciplinary authority had already made-up its mind and enclosing the copy of the inquiry report with the notice dated 6.1.1999 was a mere ritual***.*** Mr. K.D. Sood had supported the orders dated 17.3.1999 and 3.6.1999. He also contended that no prejudice has been caused to the petitioner by not supplying him the copy of inquiry report before the disciplinary authority had made-up its mind to impose the penalty of dismissal from service.

I have heard the learned counsel for the parties and perused the record.

The position which emerges from the abovementioned facts is that the copy of the inquiry report was annexed with the show cause notice dated 6.1.1999 for the first time. It is settled law that the copy of the inquiry report is to be supplied to the delinquent immediately after the same is received from the inquiry officer. Thereafter an employee is permitted to file representation against the inquiry report to point-out the discrepancies, shortcomings and violation of any rule(s) while conducting the inquiry by the inquiry officer. In the present case, the disciplinary authority had already made-up its mind to impose a punishment of dismissal as is evident from the show cause notice dated 6.1.1999. The petitioner had definitely been prejudiced by non-supply of the copy of the inquiry report before making-up the mind by the disciplinary authority to impose the penalty.

The Hon'ble Supreme Court has held in ***Managing Director, ECIL, Hyderabad and Others versus B. Karunakar and Others, (1993) 4 SCC 727*** as under:-

> **"Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the**

non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and given their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be

> **reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."**

It is evident from the definite pronouncement of law by the Hon'ble Supreme Court in ***Managing Director, ECIL, Hyderabad and Others versus B. Karunakar and Others*** case that the copy of the inquiry report is to be supplied to the delinquent to enable him to make a representation and it is only thereafter that the penalty can be imposed. This ratio of the Hon'ble Supreme Court has not been followed by the respondents-Bank.

The petitioner had also filed reply to the show cause notice dated 6.1.1999 on 18.1.1999. The disciplinary authority had mentioned in the order dated 17.3.1999 whereby penalty of dismissal has been imposed upon the petitioner that he had not filed reply to the show cause notice. It shows that the disciplinary authority had not applied its mind at all before imposing the penalty of dismissal upon the petitioner. It was incumbent upon the disciplinary authority to consider the reply filed by the petitioner before imposing the penalty of dismissal. Thus, the

imposition of penalty of dismissal from service upon the petitioner is out-come of non-application of mind as well.

Mr. Gautam had also contended during the course of arguments that the appellate order dated 3.6.1999 is cryptic and shows non-application of mind. I have gone through the appellate order dated 3.6.1999 carefully. The same is not a speaking order. It is settled law by now that the appellate order must be a speaking order and all the grounds mentioned in the appeal are to be taken into consideration by the appellate authority. The appellate authority had only reiterated the stance of the disciplinary authority while deciding the appeal.

The Hon'ble Supreme Court has held in ***Narinder Mohan Arya versus United India Insurance Co. Ltd. and Others, (2006) 4 SCC 713*** as under:-

> "**We may for the aforementioned purpose take note of the extant rules operating in the field. Requirements of consideration in an appeal from an order of the disciplinary authority by the Appellate Authority is contained in Rule 37 whereas the provisions as regards filing of a memorial are contained in Rule 40 thereof, which read as under:**
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> > **"37. *Consideration of appeals*.-(1) In case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of Rule 20 and having regard to the circumstances of the case the order of suspension is justified or not and confirm or revoke the other accordingly.**

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 23, the Appellate Authority shall consider:

(a) whether the procedure prescribed in these Rules has been complied with and if not, whether such non-compliance has resulted in failure of justice;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate, and pass orders:

I. setting aside, reducing, confirming or enhancing the penalty; or

II. remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

"40. *Memorial*. – An employee whose appeal under these Rules has been rejected by the Chairman/Chairman-cum-Managing Director or in whose case such Appellate Authority has enhanced the penalty either on appeal under Rule 24 or on review under Rule 39(2) may address a memorial to the Chairman/Chairman-cum-Managing Director in respect of that matter within a period of 6 months from the date the appellant received a copy of the order of such Appellate Authority.

The Appellate Authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule (2) of Rule 37 of the Rules. The judgment of the civil court being inter partes was relevant. The conduct of the appellant as noticed by the civil court was also relevant. The fact that the respondent has accepted the said judgment and acted upon it would be a relevant fact. The authority considering the memorial could have justifiably come to a different conclusion having regard to the findings of the civil court. But, it did not apply its mind. It could have for one reason or the other refused to take the subsequent event into consideration, but as he had a discretion in the matter, he was bound to consider the said question. He was required to show that he applied his mind to the relevant facts. He could not have without expressing his mind simply ignored the same.

An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules."

In the present case, the petitioner had been requesting the authorities concerned to supply him the copies of the documents to enable him to file detailed reply to the charge-sheet. He had also made complaints against the inquiry officer. He has been supplied with the copy of the inquiry report for the first time with

the copy of show cause notice dated 6.1.1999 denying him the reasonable opportunity of defending himself. The disciplinary authority had not taken into consideration at all the reply filed by the petitioner to the show cause notice. The appellate order dated 3.6.1999 is very cryptic. In nut-shell, it is a case where the principles of natural justice have been breached and it is evident that grave and real prejudice has been caused to the petitioner.

Accordingly, this writ petition is allowed. The annexures P-Q, dated 17.3.1999 and P-T, dated 3.6.1999 are quashed and set aside. Consequently, the respondents are directed to reinstate the petitioner with liberty to the bank to proceed against the petitioner by placing him under suspension and continue with the inquiry from the stage of furnishing him with the copy of inquiry report.

There shall be no order as to costs.

(Rajiv Sharma) Judge.

August 22, 2007.
(sck)